

FCC MAIL SECTION

Federal Communications Commission

DA 96-1696

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No.96-214
Table of Allotments,	)	RM-8886
FM Broadcast Stations.	)	
(Dededo, Guam)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 11, 1996

Released: October 18, 1996

Comment Date: December 9, 1996

Reply Comment Date: December 24, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Rolando Manuntag ("petitioner"), proposing the allotment of Channel 286C at Dededo, Guam, as the community's first local aural transmission service. Petitioner states his intention to apply for the channel, if allotted.

2. In support of his proposal, petitioner states that the community of Dededo can support a commercial FM station. Petitioner further states that the station would provide a high quality format of music, local news, and public affairs designed to meet the needs and concerns of the local citizenry.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. See, e.g., Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Hannibal, Ohio, 5 FCC Rcd 3315 (1990); and Statenville, Georgia, 5 FCC Rcd 2685 (1990). According to the 1990 U.S. Census, Dededo is attributed with a population of 3,166, and is listed therein as a Census

Designated Place. While the Census listing raises a presumption of "community" status, it is not absolute for allotment purposes where the community may be devoid of the customary factors associated with determining "community" status such as shopping centers, a newspaper, and social or civic organizations. See East Hemet, California, et al., 4 FCC Rcd 7895 (1989); Searles Valley, California, 3 FCC Rcd 5221 (1988); and Naples Florida, 41 RR 2d 1549 (1977). In the past, we have rejected claims of "community" status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. See Gretna, et al, Florida, 6 FCC Rcd 633 (1991), and cases cited therein. Therefore, petitioner is requested to provide specific information to demonstrate whether Dededo has any commercial, social, economic, cultural, or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.

4. We believe the proposal warrants consideration since the allotment of Channel 286C to Dededo, Guam, could provide the community with its first local aural transmission service, in the event Dededo is ultimately found to qualify as a "community" for allotment purposes. An engineering analysis has determined that Channel 286C can be allotted to Dededo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.<sup>1</sup>

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Dededo, Guam	----	286C

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before December 9, 1996, and reply comments on or before December 24, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the

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<sup>1</sup>The coordinates for Channel 286C at Dededo are North Latitude 13-29-01 and East Longitude 144-49-29.

petitioner, or its counsel or consultant, as follows:

Wayne Coy, Jr., Esq.  
Cohn and Marks  
1333 New Hampshire Ave., N.W.  
Suite 600  
Washington, D.C. 20036-1573  
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding.

Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No.96-214  
RM-8886

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.